

Appellate Jurisdiction (a.)

Regular Appeal No. 12 of 1869.

I. VENKATASA NAIDU and 6 others...*Appellants.*

SADAGOPASAMY IYER and 3 others...*Respondents.*

The Committee of a District duly appointed under Act XX of 1863 are entitled to maintain a suit in the Civil Court without having obtained the leave of the Court to bring the suit as well when the object of the suit is to establish their right of control under Section 3 of the Act as when it is sought to enforce such control against the Officers of the temple subordinate to them.

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R. A. No. 19

of 1869.

THIS was a Regular Appeal from the decision of E. B. Foord, Civil Judge of Chingleput, in Plaint No. 15 of 1868.

The plaint was as follows:—

The plaintiffs in this suit seek relief as follows:—

That it be found and declared by decree of this Honorable Court, first, that the summary order of this Court made on the 16th day of September 1867, on Miscellaneous Petition No. 336 of 1867, be cancelled and set aside; second, that the order of Injunction made by the Magistrate of this district forcibly ejecting plaintiffs from the Striveeraghavaswamy devastanum or temple situate and being at Trivalur and dispossessing them thereof, together with sundry jewels thereto, belonging on the 24th day of January 1867, is irregular and unauthorized, and the said order be annulled and cancelled, and that the said 1st, 2nd, and 3rd defendants be ejected therefrom and possession restored to plaintiff; third, that the liability and powers of the Executive Government and the Board of Revenue under Regulation VII of 1817 had not ceased or varied until Act XX of 1863 of the Imperial Legislature was enacted and passed into law; fourth, that no act done or appointment made by the said authorities contrary to said Regulation prior to its repeal shall be held valid or binding on the plaintiffs; fifth, that the powers

vested in the said Board of Revenue by the said Regulation had become legally vested in plaintiffs under the said Act XX of 1863 ; sixth, that the appointment of the 1st defendant as durmakurtah or warden by the said Board of Revenue was of the nature of a local agent and not of the creation of a hereditary trusteeship, and therefore the said temple is of the class described in the 3rd Section of the said Imperial Act of 1863 ; seventh, that the plaintiffs, the legally constituted Committee of the Hindu Temple of Trivalur taluq, had on the 26th day of December 1866 and on a subsequent day, full authority and power to take possession of the said temple and its properties and for that purpose to enter therein, and that the possession then acquired was valid ; eighth, that the 1st defendant as local agent to the said Board of Revenue was bound to have voluntarily transferred the temple and all properties thereto belonging to the plaintiffs immediately on their appointment as Committee, and for default are liable to be ejected therefrom ; ninth, that the 1st defendant as such local agent or warden is liable to render an account of all properties belonging to the said temple and be directed and ordered to render such account ; tenth (subject to the fifth issue hereinbefore raised), that the plaintiffs possessed power of dismissal of the said local agent or warden and other servants of the said temple ; eleventh, that the defendants are liable to the full extent of the claim herein preferred.

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The plaintiffs humbly submit that, under the powers vested in the Board of Revenue for the management of Hindu temples and religious endowments by Regulation VII of 1817, the said Board appointed the 1st defendant's predecessor a local agent otherwise called durmakurtah (warden) of the temple in litigation in this suit in or about the year 1842. Previously to such period, the management was carried out by the Collector under the Board's order,—the appointment of such durmakurtah was for the purposes of relieving the Government Officers of the performance of a duty not compatible with their profession of religion, but such act was not in violation or supersession of the said Regula-

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tions, and consequently did not create a hereditary trusteeship nor recognize 1st defendant's predecessor heir at law. Neither the 1st defendant nor his predecessors in office possessed hereditary or independent right of succession as durmakurtahs or wardens. Since the first appointment in 1842, the several durmakurtahs or wardens, including 1st defendant, exercised their functions subject to the rule and control of the Board of Revenue and the Collector of the district, and therefore the 1st defendant ever continued to be a local agent or warden. The plaintiffs further submit that the acts of the public authorities in respect of this temple were the acts of the Executive and not acts of the Imperial Government otherwise called acts of State.

The plaintiffs were lawfully nominated and appointed a Committee for the management of all the temples in the Trivalur taluq of this district on the 26th day of March 1866 and were furnished with a list of all the temples declared to be subject to their control and situate within the territorial limits of the said taluq, the temple in question being one of them.

Long previously to the 26th day of December 1866, sundry charges of malversation of temple property were preferred to the Government, the Board of Revenue, and the Collector of the district against 1st defendant, which were by indorsation referred to the plaintiffs. On a formal inquiry with due notice, the plaintiffs felt convinced of the truth of the charges and demanded of 1st defendant delivery of the temple and all its properties to them or their agent on 22nd June 1866. The 1st defendant consented and applied for three months' time to enable him to do so, but failed. Whereupon a further demand was made, and his agent (2nd defendant) represented that he had orders from his principal (1st defendant) to so deliver, and accordingly on the 26th and 27th days of December 1866 he formally delivered possession of the temple and several idols to their duly constituted agent or durmakurtah, but did not account for or deliver the jewels, documents, records, accounts, and other things, under the representation that the keys of certain rooms in which the jewels were lodged were with

his principal (1st defendant), and that on a future day they would be delivered: they also represented that the accounts, documents, and records had been accidentally destroyed by fire some months previously.

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On the 23th day of December 1866, the 2nd defendant on behalf of the defendant preferred a complaint before the Magistrate of the district (4th defendant) against plaintiffs accusing them of trespass and forcible dispossession of the temple, whereupon the said Magistrate, under assumption of jurisdiction he had not, held sundry unjust and arbitrary proceedings, fined plaintiffs from 1st to 3rd and three of their clerks in the sum of rupees 1500 and dispossessed them under Section 318, Criminal Procedure Code, and prohibited them by injunction from the exercise of their lawful functions in that temple.

The plaintiffs sought proceedings in this Court to try the issue whether the temple in question was or was not of the class contemplated in Section 3, Act XX of 1863, of the Imperial Legislature, but the Court refused to raise and try the issue under the belief that the appointment made in 1842 by the Board of Revenue was of a hereditary nature, and made order accordingly on the 16th day of September 1867.

The plaintiffs sought again to raise issue under Section 3 of the said Imperial Act in Original Suit No. 5 of 1867 on the file of this Honorable Court in which 2nd and 3rd defendants filed the action against present plaintiffs for damages on behalf of 1st defendant in reference to their public acts as Committee of the said temple, but in consequence of the aforesaid order of 16th September 1867, they were not permitted by the Court to raise the issue, the Court holding that that order operated as an estoppel though not pleaded.

In consequence of the various illegal proceedings stated, the plaintiffs are compelled to bring forward this suit.

Upon perusing the plaint, and upon hearing the arguments adduced for the plaintiffs, the Civil Judge made the following

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ORDER :—Permission to institute this suit under Act XX of 1863 having been already refused by the late Acting Civil Judge, by his order dated 16th September 1867, and the remaining subject matter of the plaint not constituting a cause of action, I must reject this plaint.

The plaintiffs appealed to the High Court against the order of the Civil Court on the following grounds :—

1. This is not a suit for which the previous permission of the Court to institute it is required by Act XX of 1863.

2. This suit is brought in respect of causes of action not mentioned in the said Act.

3. The suit is substantially a suit for possession of the pagoda and the property connected with it, and the plaintiffs were entitled to have their claim adjudicated upon in the ordinary way.

4. The plaint sets forth several *primâ facie* causes of action.

O'Sullivan, for the appellants, the plaintiffs.

Mayne, for the first respondent, the first defendant.

Srinivasa Chariyar and *Rama Row*, for the second respondent, the second defendant.

JUDGMENT :—This is a suit brought for the purpose—so far as we can understand the inartistically drawn plaint—of establishing the title of the plaintiffs under Section 3 of Act XX of 1863, and to recover possession of and control over the pagoda and the property thereto belonging, as also to make the defendants liable to certain damages claimed in the plaint. The Civil Judge rejected the plaint on the ground that leave to institute the suit had been before refused by his predecessor, and that the plaint showed no cause of action maintainable without leave.

We are of opinion that this decision cannot be upheld on the broad ground that leave was not necessary to the institution of the suit. The plaintiffs are undoubtedly

the Committee of the District appointed under the Act, and we think that the Sections of the Act relating to suits have no application to suits by properly appointed Committees as well when the object of the suit is to establish their right of control under Section 3 of the Act, as when it is sought to enforce such control against the officers of the Temple subordinate to them. This Court has already in two former cases reported in 3, *Mudras High Court Reports*, pp. 334 and 198 considered the provisions contained in the several Sections and laid down this construction, and we see no reason for not following these decisions.

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The result is that the order rejecting the plaint is improper and must be set aside and the plaintiffs left at liberty to file their plaint in the ordinary manner. The costs hitherto we think should be costs in the suit if proceeded with, one pleader's fee only being allowed to the respondents in the event of their being held to be entitled to costs. Should the plaint not be presented within two months from the date of this Court's order the parties will bear their own costs of this appeal.

Appellate Jurisdiction. (a)

Referred Case No. 25 of 1869.

MUNDY CHINNA COMARAPPA SETTI *against* RAMASAMY SETTI.

In calculating the period of limitation for bringing suits provided by Act XIV of 1859 the day on which the cause of action arose should be excluded from the computation.

THIS was a case stated under Section 22, Act XI of 1865, by H. P. Gordon, the Acting Judge of the Court of Small Causes of Chittoor in Suit No. 325 of 1869.

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This case coming on for hearing, and the parties not appearing in person or by counsel, the Court delivered the following

(a) Present : Bittleston and Innes, J. J.

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JUDGMENT:— The question referred for our decision is whether in calculating the period of limitation for bringing suits provided by Act XIV of 1859 the day on which the cause of action arose should be included; and our answer is that that day must be excluded from the computation.

Appellate Jurisdiction (a.)

Regular Appeal No. 14 of 1869.

VENKATASA NAIKER and 9 others..... *Appellants.*

T. SRINIVASSA CHARİYAR, AGENT OF SRI
 SHATAGOPASAMY OF SRI AGOBALA } *Respondents.*
 MUTTUM AT TRIVELLORE, and another. }

Regular Appeal No. 16 of 1869.

T. SRINIVASSA CHARİYAR, AGENT OF SRI
 SHATAGOPASAMY OF SRI AGOBALA } *Appellants.*
 MUTTUM AT TRIVELLORE, and another. }

VENKATASA NAIKER and 9 others..... *Respondents.*

The plaintiffs, describing themselves as the agent and gumastah of the hereditary durmakurtah of the Trivellore Pagoda, brought a suit for damages against the defendants, the Committee of the District appointed by virtue of Act XX of 1863, and their servants, for a trespass by the defendants in forcibly dispossessing them of the pagoda and the property therein and for the wrongful removal and retention of the property. The plaint stated that the defendants were punished criminally for the trespass by the Magistrate who, after enquiry under Sections 318 and 319 of the Criminal Procedure Code, restored the possession of the pagoda to the plaintiffs. The damages claimed were the value of jewels, cash, records, and accounts not restored; the expense incurred by the durmakurtah in the purification of the pagoda; the amount of counsel's and vakil's fees in the Criminal proceedings; and the amount of income received by the defendants during their possession during a festival held at the pagoda.

Held, that the plaint was brought by the plaintiffs personally and not on behalf of the plaintiffs by the durmakurtah through his recognized agents; that the plaintiffs were entitled to recover a moderate amount of damages for the wrong done to them in ejecting them from the pagoda; that the expenses incurred in the Criminal proceedings instituted by the plaintiffs were not recoverable as damages, such damages not being directly traceable to the wrong and its natural and necessary consequence; that the amount of income received by the defendants during the festival was a loss sustained by the durmakurtah and not by the plaintiffs personally, and that the plaintiffs had failed to make out the loss of property alleged.

(a) Present: Scotland C. J., and Collett, J.